

SPECIAL CIVIL APPLICATION No 8215 of 1995

Hon'ble MR.JUSTICE N.N.MATHUR

3. Whether Their Lordships wish to see the fair

5. Whether it is to be circulated to the Civil Judge?
No.

STATE OF GUJARAT

Miss Harsha Devani, A.G.P., for Respondent No.1
and 2.

Date of decision: 13/03/96

By way of this Special Civil Application filed under Article 226 of the Constitution of India, the petitioner seeks direction to the respondents to give her admission to B.E. Civil, III Semester corresponding course at Lakhdhirsinhji Engineering College at Morabi.

2. The say of the petitioner is that she applied for B.E. Civil, III Semester Corresponding Course and she was called for interview on 3-8-1995. The name of the petitioner was placed in the Merit List. However, she was refused admission on the ground that she has not passed H.S.C. Examination prior to passing Diploma Course. There is provision regarding admission of Diploma holders to B.E. Third Semester. 10% seats are reserved for such entry. The relevant rules providing the details regarding Diploma entry is contained in the information booklet.

3. The say of the respondent is that as per the Rules, who have passed 12th Standard are eligible for admission in 3rd Semester (Second year) as can be seen from the amended Rules approved by the Government Resolution dated 17-6-1993. The petitioner is said to have passed Diploma in September 1993 and thereafter H.S.C. Examination i.e. XII Standard Examination in March 1995. She has acquired the qualification of H.S.C. Examination after obtaining Diploma and not before that and as such she is not eligible.

4. In order to appreciate the controversy it would be appropriate to read the relevant Rules providing qualification, which is reproduced as under:-

"QUALIFICATION:- The candidate must have passed the final examination MPEC or Non MPEC during academic year 1994-95 awarding the Diploma with aggregate 60 percent or more marks in concerned discipline of engineering from the Technical Examination Board, Gujarat State and passed the Higher Secondary School Examination with specified subjects of science stream before passing diploma examination."

5. Reading the aforesaid Rule, emphasis is placed on the words "before passing" and it is submitted that one must have passed H.S.C. Examination before passing Diploma examination. Therefore, the short question involved is whether for Diploma holder entry to B.E., passing of Higher Secondary Examination prior to Diploma is must or it is sufficient if the Diploma is accompanied by Higher Secondary Examination without bothering of chronology. I have carefully read the Rule pertaining to the qualification. In my view there is no ambiguity in the Rule. The word "before" has been used prior to the words "passing diploma examination" only to convey that

it must not be only Secondary diploma but Higher Secondary diploma. It may be stated that one is eligible to admission to Diploma Course just after passing X Standard i.e. Secondary whereas the qualification to B.E. Course is Higher Secondary. A limited lateral entry is provided to third Semester of B.E. Decree Course to Diploma Holders, provided Diploma is accompanied by Higher Secondary i.e. Higher Secondary Diploma and not Secondary Diploma. It is of course true that the rule which is of non-statutory character, provides word "before" qualification passing Diploma examination, but this cannot be read to mean that before passing Diploma examination, one must have passed Higher Secondary Examination and not otherwise, because such a reading will lead to absurdity It is not the chronology which is important but it is the qualification which is important. If one has passed H.S.C. Examination and also Diploma examination, chronology becomes irrelevant. It also does not stand to reason to provide chronology of passing H.S.C. Examination prior to Diploma examination. It is a known rule of interpretation that the Court adopt an interpretation which is just, reasonable and sensible rather than that which is otherwise.

6. Thus, the respondents have erroneously refused admission to the petitioner on the ground that she did not pass Higher Secondary Examination prior to passing of Diploma Examination.

7. A further question arises as to what relief can be granted to the petitioner as the academic sessions 1995-96 is over. Mr. Joshi, learned Advocate appearing for the petitioner submits that a direction can be given to admit the petitioner in the subsequent semester commencing from June 1996. This prayer is being opposed by the learned Assistant Government Pleader. It is pointed that as per the required qualification the petitioner must have passed final examination of MEPC or Non MEPC examination during the academic year 1994-95 i.e. diploma. It is, however, not disputed that in the year 1995 on account of non-availability of sufficient number of candidates the Government relaxed in the Rules granting permission to the students who had passed diploma examination in respective discipline in the year 1993. The learned Advocate appearing for the petitioner has referred various decisions of the Apex Court reported in (1) 1984(1) Supreme Court Cases 160, (2) AIR 1989 SC 307 and (3) 1995 Supp. (4) Supreme Court Cases 42 and contended that in a fit case Court can give direction for admission in the Course commencing in the next Sessions in order to secure ends of justice.

8. Considering the fact that the petitioner has lost academic year for no fault of her and that she was selected and her name appeared in the merit list, but she was refused admission because of erroneous reading of rule, it is a fit case to direct the respondents to admit the petitioner to B.E. (Civil) III Semester of Corresponding Course at Lakhdhirsinhji Engineering College, at Morbi in the Semester commencing from the month of June 1996. Ordered accordingly.

9. In view of the aforesaid, Rule is made absolute to the aforesaid extent. No order as to cost.

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